

**REMARKS**

This is in response to the Office Action mailed on December 3, 2003. Claim 1-39 are currently pending. In the Office Action, all of the pending claims were rejected under 35 U.S.C. §103. In addition, in the Office Action the Examiner addresses arguments raised by the Applicant regarding the unavailability of one reference relied upon by the Examiner under 35 U.S.C. § 103(c). No amendments to the pending claims are made by the present filing, although the claims are reproduced for the convenience of the Examiner. All of the claims are believed to be patentable over the cited prior art, and their reconsideration is requested.

**IMPROPER FINALITY OF THE PRESENT REJECTION**

Applicant believes that the finality of the present rejection is improper based on the changed nature of the Examiner's rejection. In particular, as previously noted in response to the Office Action dated June 18, 2003, the reference of Polzin et al. (U.S. Patent No. 6,166,545) is unavailable to the Examiner under 35 U.S.C. § 103(c) for use in rejecting the pending claims under 35 U.S.C. § 103(a). Notwithstanding the Examiner's rationale for maintaining this rejection, which will be addressed subsequently, the Examiner also altered the nature of the rejection based on the reference of Polzin et al. to conform to his rationale for not removing the Polzin et al. reference as required by 35 U.S.C. §103(c). In particular, the Examiner's new theory of the applicability of the Polzin et al. reference essentially constitutes a new ground of rejection that is not necessitated by amendment nor based upon information submitted in an information disclosure statement. Applicant, therefore, respectfully requests that the Examiner reconsider and withdraw the finality of the present Office Action in view of the following comments.

The Applicant notes that the Office Action dated June 18, 2003 provided the Examiner's initial basis for rejection relying upon the reference of Polzin et al. In

particular, the Examiner relied upon the portion of the Polzin reference corresponding to the Summary of the Invention of Polzin et al., i.e., "Column 1, Lines 48-67, Column 2, Lines 1-35." *See* Office Action Dated June 18, 2003, p. 4.

In the subsequent response the Applicant notified the Examiner that the reference of Polzin et al. was unavailable to the Examiner as obviousness prior art due to 35 U.S.C. § 103(c). In relevant part, 35 U.S.C. § 103(c) states that "[s]ubject matter developed by another person ... shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." The Examiner, however, has maintained the rejections under 35 U.S.C. § 103(a) based upon the Polzin reference and has instead chosen to rely upon the Background section of the Polzin reference, i.e., "Column 1, Lines 16-34," which was not previously referenced or discussed. *See* Office Action dated December 3, 2003, p. 4.

The Applicant believes this alteration on the part of the Examiner reflects a belief that the reference of Polzin et al. may still be cited for background material under 35 U.S.C. § 103(c), i.e., as subject matter not developed Polzin et al., though not for other material, i.e., the invention of Polzin et al. Applicant *strongly* disagrees with this characterization of 35 U.S.C. § 103(c) and believes that there is *no* basis for this characterization in the statute, the case law, the rule or the M.P.E.P. Indeed, if the Examiner has any basis, such as case law, rule, or internal Patent Office procedure, for believing that *any* part of a reference removed under 35 U.S.C. § 103(c) may continue to be relied upon for an obviousness rejection, the Applicant respectfully requests that such basis be provided. Certainly the Applicant knows of no such basis.

Nevertheless, the Examiner has altered the previous rejection to rely upon the *background* material referenced in the Polzin reference, which presumably describes the subject matter of *the Noll et al. reference*, as opposed to the subject matter of the Polzin et al. reference, i.e., the Summary of the Invention. In other words the Examiner has altered his theory of obviousness to rely upon a *different* reference that the Examiner believes is discussed in the Polzin et al. reference, as opposed to the Polzin et al. reference itself. Applicant believes this is an attempt by the Examiner to avoid issuing a new, non-final rejection and does not represent a good faith effort to advance the application on its merits. At the very least, in substance, the present rejection is a new ground of rejection that relies upon art other than the Polzin et al. reference. As such, the present final rejection is based upon new art not necessitated by amendment nor submitted information and, therefore, is not properly final. Applicant, therefore, respectfully requests that the Examiner withdraw the finality of the present Office Action.

A Petition requesting withdrawal of the finality is also filed herewith, in accordance with 37 C.F.R. 1.181 and M.P.E.P. 706.07(c).

### **Rejections Under 35 U.S.C. § 103**

#### **Failure to Cite the Best Available Art**

As noted above, the Examiner has rejected claims 1-39 as obvious in view of the reference of Polzin et al. Applicant respectfully traverses this rejection.

As noted above, the Examiner appears to rely on the reference of Polzin et al. for what the Examiner purports to be a characterization of the paper of Noll et al. Indeed, the Examiner emphatically states that, “[t]he teachings of Noll et al is [sic] not the Polzin et al. invention, and consequently is available for use under 35 U.S.C.

§ 103 rejection. *No further teachings of Polzin et al have been referred to in the Office Action.*" See Office Action dated December 3, 2003, p. 2. (Emphasis added).

In view of these comments by the Examiner and of the unavailability of the reference of Polzin et al. due to 35 U.S.C. § 103(c), Applicant is at a loss to understand the Examiner's reasoning in maintaining the present obviousness rejections in view of the reference of Polzin et al. In particular, it is inexplicable that the Examiner would continue to rely upon a second-hand characterization of the reference of Noll et al., which may or may not accurately characterize the disclosure of the Noll et al. reference. The present obviousness rejections are not only inexplicable in view of the comments made by the Examiner and the apparent availability to the Examiner of the Noll et al. reference, they also place the Applicant in the position of having to traverse an improper rejection.

In particular, the Examiner is clearly relying upon the reference of Polzin et al. for its description of another reference. While the portion of the Polzin et al. reference cited by the Examiner supposedly relates to the Noll et al. reference, (Applicant notes that nothing in the previously or currently cited portion of the Polzin et al. reference cites to the Noll et al. reference, contrary to the Examiner's assertion) Applicant cannot meaningfully respond to such second-hand citations. The rejection is simply improper, and the record should be made right by an appropriate rejection or an allowance.

Furthermore, the Applicant believes the present rejection, as formulated by the Examiner, runs counter to the clear mandates and guiding principles set forth in the Manual of Patent Examining Procedure (M.P.E.P.) regarding rejections. For example, M.P.E.P. § 706 states that, "[t]he goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at

the earliest opportunity.” To further this goal, M.P.E.P. § 706.02 emphasizes that, “[p]rior art rejections should ordinarily be confined strictly to the best available art.” The present rejections clearly run afoul of these mandates. Citation by the Examiner of a first document strictly for its brief and incomplete discussion of an uncited document hardly constitutes a clear articulation of a rejection or the use of the best prior art. The failure to clearly articulate the intended or envisioned rejection and to rely upon the actual art of interest unfairly prejudices the Applicant’s ability reply completely and meaningfully and to thereby further prosecution.

In particular, if the Examiner is truly relying on the reference of Polzin et al. for what the Examiner believes is a discussion of the paper of Noll et al., the proper rejection should be in view of the Noll et al. reference, not the Polzin et al. reference. Such a rejection would allow the Applicant to argue the merits and deficiencies of the Noll et al. reference itself, which the Applicant is currently unable to do in a responsive manner since the paper of Noll et al. is not presently cited against the pending claims.

For example, once the rejection is properly framed, the Applicant will note that the reference of Noll et al. does not appear to disclose what the Examiner alleges. In particular, the Examiner has indicated that, “the teachings of IEEE Paper ISBN: 0278-0062 dated June 1991, Noll et al., titled ‘Homodyne Detection in Magnetic Resonance Imaging’, has been relied upon for blending texture from the image data into the processed data.” The reference of Noll et al., however, does not disclose texture blending in this manner. Indeed, the reference of Noll et al. teaches the use of a homodyne demodulation reference to remove quadrature components or preserve phase and polarity information in an MRI image. *See* Noll et al., p. 154, Abstract and Introduction. The teaching of the Noll et al. reference in no way suggests the step of blending texture from the image data into the processed data, as disclosed in the present application and recited in the pending claims. *See*

Application, page 4, lines 3-6 (explaining that “[o]riginal texture may be added back to non-structural regions to further facilitate interpretation of both the non-structural and structural features.” and page 22, lines 1-26 (explaining that the steps of texture blending “tend to add more or less original texture depending upon the gradient magnitude of the non-structural pixels.) If the Examiner truly believes this step is disclosed or taught by the Noll et al. reference, the Applicant respectfully requests that the Examiner issue a proper rejection in view of the reference of Noll et al. which *specifically* cites to the portions of reference alleged to disclose the recited subject matter.

The Applicant reiterates, however, that this is only one example of the deficiencies believed to be present in the reference of Noll et al., as well as in the other cited references, such as Li et al. If given a fair opportunity to respond to a proper rejection, the Applicant believes that the deficiencies of both the Noll et al. and the Li et al. references can be fully developed. Based on the improper nature of the present rejection and on the apparent deficiencies in the art presumably relied upon by the Examiner, the Applicant respectfully requests reconsideration and allowance of the pending claims.

*Unavailability of U.S. Patent No. 6,571,020*

The Examiner has rejected claims 3, 9-21, 25, and 34 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5, 602, 934 (the Li et al. reference) and U.S. Patent No. 6, 166, 545 (the Polzin et al. reference), and U.S. Patent No. 6,571,020 (the Dumoulin et al. reference). Applicants note, however, that the Dumoulin et al. reference and the present invention were assigned or under an obligation of assignment to a common entity at the time the invention was made. Moreover, the Dumoulin et al. reference would only qualify as prior art under 35 U.S.C. §102(e), given the copendency of the Dumoulin et al. patent with the present application (Dumoulin et al. having issued on May 27, 2003, after the filing date of

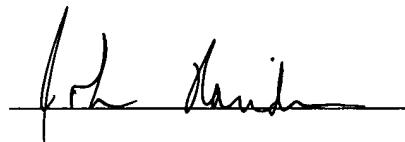
December 30, 1999 of the present application). Furthermore, in accordance with 35 U.S.C. §103(c), because the present application was filed after November 29, 1999, the Dumoulin et al. reference is unavailable for use under 35 U.S.C. §103(a). Accordingly, the rejection formulated by the Examiner under that section is, again, not proper. Therefore, the Applicant respectfully requests withdrawal of the rejection of claims 3, 9-21, 25, and 34 as obvious in view of the Dumoulin et al. reference.

**Conclusion**

In view of the remarks set forth above, the Applicant respectfully requests allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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John M. Rariden  
Reg. No. 54,388  
FLETCHER YODER  
P.O. Box 692289  
Houston, TX 77269-2289  
(281) 970-4545